The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMNI INNOVATIONS, LLC, a Washington limited liability company; and JAMES S. GORDON JR. Plaintiffs, v. SMARTBARGAINS.COM, LP, a Delaware Limited Partnership; Defendant.	No. CV06-1129JCC [proposed] **ORDER GRANTING SMARTBARGAINS.COM, LP'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO FED. R. CIV. P. 12(b)(6)**

THIS MATTER comes before the Court on Defendant SmartBargains.com, LP ("SmartBargains") Motion to Dismiss for Failure to State a Claim pursuant to Fed. R. Civ. P 12(b)(6) (the "Motion"). Having reviewed the First Amended Complaint, SmartBargains's Motion, Plaintiffs' Response, and SmartBargains's Reply, the Court finds and rules as follows:

1. The federal CAN-SPAM Act, 15 U.S.C. § 7701 *et seq*. ("CAN-SPAM") does not impose liability for immaterial errors in the header information of commercial email.

2. CAN-SPAM preempts the Washington Commercial Electronic Mail Act,

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP
505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

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RCW 19.190 *et seq*. ("CEMA") to the extent that CEMA pertains to immaterial errors in the header information of commercial email. Gordon v. Virtumundo et al., Case No. CV06-0204-JCC, W.D.Wash. (Coughenour, J.) ("Virtumundo"); *See also* Omega World Travel, Inc. v. Mummagraphics, Inc., 469 F.3d 348 (4th Cir. 2006) (holding that CAN-SPAM preempts Oklahoma's state commercial email statute to the extent that it pertains to immaterial errors.)

3. CEMA does not impose liability for immaterial errors. Benson v. Or. Processing Serv., 2007 Wash. App. LEXIS 31 (Wash. Ct. App. 2007).

4. Plaintiffs' allegations are identical to those asserted by Plaintiffs in Virtumundo, and as in that case, represent immaterial errors in email header information.

5. Accordingly, Plaintiffs' First and Second Causes of Action under CAN-SPAM and CEMA are dismissed with prejudice.

6. Plaintiffs' Washington Consumer Protection Act claims ("CPA", RCW 19.86) are based solely on alleged email messages identical to those on which their alleged violations of CEMA are based. Any errors in those email messages are immaterial. Accordingly, Plaintiffs' Third Cause of Action under the CPA is dismissed with prejudice.

DATED this __ day of ________________, 2007.

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UNITED STATES DISTRICT JUDGE J. COUGHENOUR

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